UNITED STATES OF AMERICA Before the

RECEIVED C.F.T.C.

COMMODITY FUTURES TRADING COMMISSIONAUG 13 P 4: 29

LAKE SHORE ASSET MANAGEMENT, LTD.

OFFICE OF PROCEEDINGS PROCEEDINGS

CFTC Docket No. CRAA 07-02 ORDER

NATIONAL FUTURES ASSOCIATION

Lake Shore Asset Management, Ltd. ("LSAM") has filed with the Commission a petition for a partial stay ("LSAM petition") of the effective date of the Notice of Second Amended Member Responsibility Action ("Second Amended MRA") pending a hearing by the National Futures Association ("NFA"). LSAM seeks a stay of the following portion of the Second Amended MRA:

NFA Members receiving notice of this Second Amended MRA by service or otherwise who carry accounts in the name of, controlled by, or advised by Lake Shore Ltd. including the accounts identified by Sentinel in Exhibit A or by any person or entity acting on behalf of Lake Shore Ltd. or any of its affiliates are prohibited from disbursing or transferring funds to Lake Shore Ltd. or any entity controlled by them for any reason without prior approval of NFA.

LSAM petition at 1.

LSAM challenges the authority of NFA to issue this "asset freeze" paragraph because, among other reasons, it asserts that the paragraph is beyond the authority conferred by NFA Compliance Rule 3-15, pursuant to which the Second Amended MRA was issued.¹ In this

¹ NFA Compliance Rule 3-15(a) provides:

A Member or Associate may be summarily suspended from membership, or association with a Member, may be required to restrict its operations (e.g., restrictions on accepting new accounts), or may otherwise be directed to take remedial action, (e.g., may be ordered to immediately infuse additional capital or to maintain its adjusted net capital at a level in excess of its current capital requirement), where the President, with the concurrence of the NFA Board of Directors or Executive Committee, has reason to believe that the summary action is necessary to protect the commodity futures markets, customers, or other Members or

regard, LSAM contends that Rule 3-15 does not allow NFA either to implement a freeze on a member's (or anyone else's) assets or to restrict the activities of any person other than the member, in this case, LSAM, who is the subject of the MRA. Accordingly, LSAM argues that NFA's directions in the challenged paragraph to its members to impose asset freezes on accounts owned or controlled by LSAM, or any entity acting on behalf of LSAM, and to prohibit transfers to LSAM or entities controlled by LSAM, have no basis in the rule that the NFA relies on for its authority. LSAM does not support these contentions with citations concerning former NFA actions.²

The Second Amended MRA was issued by NFA on August 6, 2007, and is currently in effect. Under Commission Rule 171.41(e), 17 CFR § 171.41(e), if a restriction imposed by NFA in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission "shall not delay its decision on the petition to await the receipt of the National Futures Association's response," provided for in Commission Rule 171.41(c). However, this case appears to present a matter of first impression for the Commission and raises significant legal and policy questions with respect to member responsibility actions. It also involves the interpretation of an NFA rule and NFA's authority thereunder. In light of these circumstances, we believe that we would benefit from a response to the LSAM petition from NFA.

Associates. No member of either the Board of Directors or the Executive Committee shall participate in a summary action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 516 or Bylaw 708(c). Notice of such summary action shall be given promptly to the Commission.

² LSAM also contends that the asset freeze is unconstitutional because the property is taken without due process of law, citing the Seventh Circuit's decision in CFTC v. Lake Shore Asset Management, Ltd., 2007 WL 2206862 (7th Cir. Aug. 2, 2007). We find this contention to be without merit. The Seventh Circuit's decision was limited to the length of time a statutory ex parte restraining order was in effect without a hearing for a preliminary injunction. NFA's Second Amended MRA provides for a prompt hearing upon LSAM's request. There is no indication in the petition that LSAM requested a hearing and that it was denied. Moreover, LSAM can end the asset freeze as soon as it demonstrates to NFA that it is in compliance with NFA requirements.

Accordingly, we waive the requirement of Rule 171.41(e) in this proceeding and direct the NFA to file a response to LSAM's petition.³ In particular, we direct NFA, which remains free to respond to other aspects of the petition, to brief us specifically on whether NFA has the authority under NFA Compliance Rule 3-15 to issue the paragraph challenged by LSAM in the Second Amended MRA.⁴ NFA is directed to file its response in accordance with Commission Rule 171.41(c) within the timeframe provided for in Commission Rule 171.22(b)(4), that is, by Friday, August 17, 2007.

IT IS SO ORDERED.

By the Commission (Acting Chairman LUKKEN and Commissioners DUNN and CHILTON). (Commissioner SOMMERS, not participating).

David A. Stawick

Secretary of the Commission

Dated: August 13, 2007

³ In accordance with Commission Rule 171.14, we have determined that in order that we may make an informed decision on the petitioner's challenge, this waiver of the rules will serve the ends of justice, and no party will be prejudiced. In this regard, the assets have already been subject to a judicial freeze since June 27. *CFTC v. Lake Shore Asset Management Ltd.*, 1:07-cv-03598 (N.D.III. June 27, 2007). NFA initially ordered the asset freeze on June 22, 2007. NFA issued an amended MRA on August 3, and the second amended MRA, the subject of this petition, on August 6. LSAM did not file its petition for stay of the order until August 10. Consequently, we find that a few more days will not prejudice the parties.

⁴ Cf. Commonwealth Financial Group, Inc. v. National Futures Association, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,993 at 44,804 (CFTC Mar. 18, 1997) (finding that Rule 3-15 "authorizes NFA to fashion remedial measures suitable for a particular case and to deal with unforeseen circumstances as they arise.").